

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Breuer, Inc.,

Complainant,

vs.

Del Oro Water Company, Inc.,

Defendant.

Case 02-05-035  
(Filed May 9, 2002)

**SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER  
AND ADMINISTRATIVE LAW JUDGE**

Breuer, Inc., (Breuer) alleges that Breuer and Del Oro Water Company, Inc. (Del Oro) entered into two contracts related to the provision of public utility water service, and that Del Oro breached the contracts. Del Oro denies that it breached the contracts, and asserts affirmative defenses to the complaint.

The Commission held a prehearing conference (PHC) on Friday, October 4, 2002. This ruling confirms the categorization of this proceeding, and reaffirms the determination that hearings are required. It also sets forth the proceeding's scope and schedule, designates the presiding officer, and addresses other procedural issues which will facilitate the efficient processing of this complaint.

### **1. Category of Proceeding and Need for Hearings**

In the Instructions to Answer dated June 10, 2002, this case was categorized as adjudicatory and hearings were deemed necessary. No party timely objected to the categorization. Based upon the PHC, it is confirmed that hearings will be required.

### **2. Presiding Officer**

Pursuant to Rule 6(b)(3) of the Commission's Rules of Practice and Procedure, Commissioner Duque designates Administrative Law Judge (ALJ) Maloney as the presiding officer.

### **3. Issues to be Addressed**

The issues are framed by the complaint and the answer to the complaint. They include the following:

1. Whether Del Oro breached the contracts with Breuer in the manner set forth in the First Cause of Action of the complaint.
2. Whether Del Oro breached the contracts with Breuer in the manner set forth in the Second Cause of Action of the complaint.
3. The remedy, if any, the Commission should order if Del Oro is proven to have breached the contracts with Breuer.
4. The applicability and effect of the nine separate affirmative defenses to the complaint that are asserted by Del Oro.

#### **4. Schedule**

We adopt the following schedule for the proceeding, taking into account discussions at the PHC.

Event	Date
Complainant serves Opening Testimony	October 25, 2002
Defendant serves Responsive Testimony	November 15, 2002
Complainant serves Rebuttal Testimony	November 29, 2002
Cut-off Date for initiation of discovery	December 1, 2002
Cross-examination estimates served on the ALJ and the parties	December 3, 2002 no later than 5:00 p.m.
Evidentiary Hearings	Monday, December 9, 2002 commencing at 9:00 a.m. Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, CA. Also December 10 and 12, if necessary.
Concurrent Opening Briefs	January 6, 2003
Concurrent Reply Briefs	January 15, 2003
Presiding Officer's Decision	March 17, 2003

Our goal is to resolve this case as soon as possible, and we anticipate that the resolution will not exceed 12 months from the date of filing of the complaint, pursuant to Pub. Util. Code § 1701.2(d).

#### **5. Ex Parte Communications**

Pursuant to Pub. Util. Code § 701.2(b), ex parte communications are prohibited in this proceeding. This includes discussions with decisionmakers on all issues raised in this proceeding.

Not only parties, but any other person who has a financial interest in this proceeding or is a representative of a formally organized association intending to influence a decisionmaker, even if the person or association is not a party, is prohibited from speaking with a decisionmaker on a substantive issue in this case. See Pub. Util. Code §§ 1701.1, 1701.2 and Rules 5 and 7 of the Commission's Rules of Practice and Procedure for the specific rules regarding who is prohibited from making ex parte communications and what type of communications are prohibited.

## **6. Other Matters**

If the parties have discovery disputes they are unable to resolve by meeting and conferring, they should raise these disputes with the Commission pursuant to Resolution ALJ-164.

Parties should follow the requirements set forth in Appendix B regarding service, correction and identification of, and cross-examination with, exhibits in the hearing room.

### **IT IS RULED** that:

1. Based on the prehearing conference, hearings are necessary.
2. The issues to be addressed and the schedule for this proceeding are set forth in Sections 3 and 4 of this ruling and scoping memo, unless subsequently modified by the Assigned Commissioner or Administrative Law Judge (ALJ).
3. ALJ Maloney is the presiding officer in this proceeding. ALJ Maloney is the presiding officer in this proceeding.
4. Attached as Appendix A is the service list for this proceeding.
5. Parties shall comply with the requirements set forth in Appendix B regarding exhibits.

6. Parties shall comply with the procedures set forth in Resolution ALJ-164 regarding discovery disputes.

7. Pursuant to Pub. Util. Code § 1701.2(b), ex parte communications in this proceeding are prohibited. This includes discussions with decisionmakers on all issues raised in this proceeding.

Dated October 16, 2002, at San Francisco, California.

/s/ HENRY M. DUQUE

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Henry M. Duque  
Assigned Commissioner

/s/ STEVEN KOTZ for

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Kathleen C. Maloney  
Administrative Law Judge

## APPENDIX A

\*\*\*\*\* APPEARANCES \*\*\*\*\*

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**(END OF APPENDIX A)**



## **APPENDIX B**

### **Prepared Written Testimony and Exhibits**

#### **Service**

All prepared written testimony should be served on all appearances and state service on the service list, as well as on the Assigned Commissioner's office and on the Assigned ALJ. Prepared written testimony should NOT be filed with the Commission's Docket Office.

#### **Identification of Exhibits in the Hearing Room**

Each party sponsoring an exhibit should, in the hearing room, provide **two copies to the ALJ and one to the court reporter**, and have at least five copies available for distribution to parties present in the hearing room. **The upper right hand corner of the exhibit cover sheet should be *blank* for the ALJ's exhibit stamp.** Thus, if parties "pre-mark" exhibits in any way, they should do so in the upper left hand corner of the cover sheet. Please note that this directive applies to cross-examination exhibits as well. If there is not sufficient room in the upper right hand corner for an exhibit stamp, please prepare a cover sheet for the cross-examination exhibit.

#### **Cross-Examination With Exhibits**

As a general rule, if a party intends to introduce an exhibit in the course of cross-examination, the party should provide a copy of the exhibit to the witness and the witness' counsel before the witness takes the stand on the day the exhibit is to be introduced. Generally, a party is not required to give the witness an advance copy of the document if it is to be used for purposes of impeachment or to obtain the witness' spontaneous reaction. An exception might exist if parties have otherwise agreed to prior disclosure, such as in the case of confidential documents.

#### **Corrections to Exhibits**

Generally, corrections to an exhibit should be made in advance and not orally from the witness stand. Corrections should be made in a timely manner by providing new exhibit pages on which corrections appear. The original text to be deleted should be lined out with the substitute or added text shown above or inserted. Each correction page should be marked with the word "revised" and the revision date.

Exhibit corrections will receive the same number as the original exhibit plus a letter to identify the correction. Corrections of exhibits with multiple sponsors will also be identified by chapter number. For example, Exhibit 5-3-B is the second correction made to Chapter 3 of Exhibit 5.

**(END OF APPENDIX B)**

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge on all parties of record in this proceeding or their attorneys of record.

Dated October 16, 2002, at San Francisco, California.

/s/ FANNIE SID  
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Fannie Sid

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TTY# 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.